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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No _____

In the
Supreme Court of the United States
October Term, 1997

DAVID THOMAS HIGHTOWER SR.

Petitioner,

v.

KENDALL HEALTHCARE PRODUCTS,
MASSACHUSETTS CORPORATION,

Respondents.

ON A PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

David T. Hightower Sr.
PRO-SE PETITIONER
1665 Westwood Ave. SW
Atlanta, Georgia 30310
(404) 595-1248

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68 pp

QUESTIONS PRESENTED FOR REVIEW

I. Whether Georgia courts refusal to compel Respondent to respond to interrogatories constitute violation of the Petitioner's Sixth Amendment right to obtain witness in his favor and his Fourteenth Amendment right to due process as guaranteed by United States Constitution.

II. Whether the Georgia courts omitting in order to pass on basic questions of fact and issues constitute violation of the Petitioner's right of due process as guaranteed by the Fourteenth Amendment of of the United States Constitution.

RULE 29.6 LISTING

Parent Company:

Tyco International, Exeter NH 03833

Subsidiaries include:

Kendall Healthcare Products, Mansfield, Mass.

Ansul Inc., Marinette, WI

Carlisle Plastics Inc., Phoenix, AZ

Deutschland Holdings Inc., Exeter, NH

Earth Technology Corp. (USA), Longbeach, CA

Grinnell Corp., Exeter, NH

Kendall International Inc., Exeter, NH

Ludlow Corp., Exeter, NH

Mueller Holdings Corp., Decatur, IL

Rochester Corp., Culpeper, VA

Simplex Technology Inc., Portsmouth, NH

J.B. Smith MFG, Houston, TX

TABLE OF CONTENTS

1. QUESTIONS PRESENTED FOR REVIEW i

2. RULE 29.6 LISTING ii

3. TABLE OF AUTHORITIES iv

4. OPINIONS BELOW 1

5. STATEMENT OF JURISDICTION 2

6. CONTITUTIONAL PROVISIONS 3

7. STATEMENT OF CASE 4

8. REASONS FOR GRANTING WRIT 10

   I. LEGAL BASIS

      A. Georgia courts refused to compel Kendall Corporation to respond to interrogatories 11

      B. Georgia courts omitted in order to pass on issue of Defamation 14

      C. Georgia courts omitted in order to pass on facts by calling corporate memos "warning letters" 16

      D. Georgia courts permitted Kendalls submission of illegal affidavit 21

   II. CASE CITATIONS AND AUTHORITIES IN SUPPORT OF REQUEST FOR WRIT 25

   III. NATURE OF CASE IMPORTANCE 29

9. CONCLUSION 30

APPENDIX

TABLE OF AUTHORITIES

1. Beckley Newspapers v. Hanks, 389 US 81,83 (1961)

2. Bose Corp. v. Consumers Union, 466 US 485, 499, 508-10 (1984)

3. Brooklyn Savings Bank v. O'Neil 324 US 897 703 (1945)

4. Carlson v. Washington, 234 US 103,105 (1914)

5. Creswell v. Knights of Pythias 225 US 246 261 (1912)

6. Fiske v. Kansas, 274 US 380, 385-86 (1927)

7. Greenbelt Cooperative Publishing Assn. v. Bresler, 398 US 6, 11 (1970)

8. Merchants National Bank v. Richmond, 256 US 635, 638 (1921)

9. New York Times Co. v. Sullivan, 376 US 254 285 (1964)

TABLE OF AUTHORITIES

10. Rosenblatt v. Baer, 383 US 75, 99, 86 (1966) S.Ct. 669, 15 L. Ed. 597

11. Shelley v. Kraemer, 341, US 1, 14 (1948)

12. Stein v. New York, 346, US 156, 181 (1953)

13. Sterling v. Constantin, 287, US 378,398 (1931)

14. Time, Inc. v. Pape, 401 US 279,284 (1971)

15. Official Code Of Georgia 34-8-256 (B)

STATUES AND RULES

UNITED STATES CONSTITUTION

SIXTH AMENDMENT

FOURTEENTH AMENDMENT, SEC. 1

UNITED STATES CODE

28 USC 1257 (A)

OTHER SOURCES

GEORGIA DEPARTMENT OF LABOR

OPINIONS BELOW

The opinion of the Georgia Court of Appeals in Hightower v. Kendall is attached hereto in the Appendix (A), case number A96A2147 dated February 12th, 1997.

JURISDICTION

On July 25, 1997 the Supreme Court of Georgia denied request for re-cosideration. see Appendix (A) The jurisdiction of this Court is invoked under 28 USC 1257 (A).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves portions of the Sixth and Fourteenth Amendments to the United States Constitution.

"litigant entitled to witness in his favor."

U. S. Const. Sixth Amendment

"right to due process under the law and equal protection of the law."

U. S. Const. Fourteenth Amend. Sec. 1

STATEMENT OF CASE

Kendall Heathcare corporation, which is a business concern with annual revenues in excess of four billion dollars, manufactures disposal hospital supllies such as catheters, breathing tubes and other products which are primarily used for invasive hospital tasks and procedures. Kendall ranks as the worlds second largest manufacturer of these products.

On September 30, 1995 Hightower, Petitioner sued Kendall Healthcare Products, Respondent. Hightower filed a complaint in Georgia State Court for Wrongful Discharge, Defamation, Negligence and a claim for punitive damages based on Kendall's malicous act of falsely accusing Hightower of stealing which is actionable under both state and federal law.

STATEMENT OF CASE

In addition, Kendall submitted its false claims of theft and dishonesty to the Georgia Department of Labor in an attempt to prevent Hightower from receiving unemployment benefits. The act of submitting false claims of theft and dishonesty was not only malicous but illegal pursuant to

OCGA 34-8-256 (B).

"Any officer or agent who knowingly makes a false statement or representation or fails to disclose a material fact in order to prevent or reduce the payment of benefits to any individual entitled thereto.....shall be punished by fines and imprisonment. Each such act shall constitute a separate offense.

The Georgia Dept. of Labor held a hearing on September 19, 1995 at which it determined that Kendalls claims were false and awarded unemployment benefits to Hightower.

Ga. Dept. of Labor decision Appendix (I) also referenced on (page 28)

STATEMENT OF CASE

However, the State Court of Georgia rendered summary judgment in favor of Kendall. The Georgia court refused to compel Kendall to respond to properly submitted Interrogatories, stating that there were "no material issues to be decided" because Hightower was an "at will" employee, thereby omitting the issues of Defamation and Malice.

"At will" employment is no justification or defense for Defamation and Malice. Kendalls responses to interrogatories would have provided additional evidence in support of Hightowers claims. The Georgia courts action violated Hightowers Sixth Amendment right to obtain witness in his favor as well as dening his Fourteenth Amendment right to due process.

STATEMENT OF CASE

Opon the Georgia State court rendering summary judgment in favor of Kendall, Hightower exercised his option to appeal before the Georgia Court of Appeals. In the Georgia Court of Appeals decision the court stated that the issue of Defamation had not been raised by Hightower, but rather, only the issue of Kendall making false statements to the Georgia Department of Labor was raised.

The Georgia Court of Appeals added that statements made to the Georgia Department of Labor are priviledged and cannot be used for libel claim.

STATEMENT OF CASE

In rendering its decision in favor of Kendall the Georgia Court of Appeals appears to have deliberately omitted the issue of Defamation in order to pass on rendering a decision in favor of Hightower.

This decision is no more than a regurgitation of Kendalls frivolous defense in this matter. In the original complaint the issue of Defamation and the malicous act of submitting false claims to the Georgia Dept. of Labor were raised separate and apart. Therefore both issues should have been considered separate.

Hightower had already substantiated his

claim that the issue of Defamation had been rasied through the orginal complaint, terminaition letters, memos and Kendalls own testimony. The Georgia Court of Appeals action of omitting in order to pass on the issues once again denied Hightowers right to due process under the law.

Even worse, the Georgia Court of Appeals appears to try to substitute the clear allegations of "theft and Dishonesty" made by Kendall, in regards to Hightower, with "pallet policy violation" in order to avoid and diminish Hightowers Defamation claim. This effort was made through the use of an improper and illegal affidavit submitted by Kendall. Again this violates Hightowers right to due process and equal protection under the law as guaranteed by the United States Constitution.

REASONS FOR GRANTING WRIT

I. Legal basis

In an astounding decision which conflicts with the well settled law and doctrines of this Court, the Georgia courts have abdicated their duty to preserve and to protect the guarantees of its citizens.

Acting under the color of state law the state courts of Georgia abridged constitutionally guaranteed rights.

"The action of the state courts and judical officers in their official capacities is to be regarded as action by the state."

Shelley v. Kraemer, 341 US 1, 14 (1948)

REASONS FOR GRANTING WRIT

(A)

THE STATE COURT OF GEORGIA REFUSED TO COMPEL KENDALL TO RESPOND TO PROPERLY SUBMITTED INTERROGATORIES THEREBY DENYING HIGHTOWERS SIXTH AND FOURTEENTH AMENDMENT RIGHTS

By not compelling Kendall to respond to properly submitted interrogatories the Georgia courts action violated Hightowers Sixth Amendment right to obtain witness in his favor and his Fourteenth Amendment right to due process.

Hightower filed a Complaint for Wrongful Discharge, Defamation, Negligence and a claim punitive damages based on Kendalls malicous act of accusing Hightower of stealing.

The court accepted Kendalls argument that Hightower was and "at will" employee and could be terminated from employment at any time with out cause. However, Kendall offered that

REASONS FOR GRANTING WRIT

Hightowers violation of its " pallet policy" was some how a defense for Defamation and justification for the malicous and mean spirited act of accusing Hightower of theft.

The only defense for the defamatory act of accusing some one of theft by Georgia law is the truth not "pallet policy violation". Hightower submitted interrogatories, which primarily focused on Kendalls pallet policy in order to prove that even Kendalls claim that Hightower somehow violated its pallet policy were not true.

Instead, this false accusation was only a cloak for Kendalls malicous act. Other interrogatories were offered to further substantiate Hightower claim for Defamation and Malice.

Interrogatories Appendix (C)
Motion to Compel Appendix (D)
Motion for Default Appendix (E)

REASONS FOR GRANTING WRIT

Therefore, the Georgia courts refusal to compel Kendall to respond to interrogatories violated Hightowers right to witness in his favor and his right to due process under the law. Also it must be noted that Kendall has not offered an adequate defense for Defamation.

In as much as the issue of Defamation and the issue of Malice were still outstanding, the Georgia courts should not have granted summary judgment in favor of Kendall.

Especially, in light of the fact that Kendall had no defense or excuse for the malicous act of accusing Hightower of theft.

REASONS FOR GRANTING WRIT

(B)

THE GEORGIA COURT OF APPEALS OMITTED IN ORDER TO PASS ON THE ISSUE OF DEFAMATION, THEREBY DENYING HIGHTOWERS FOURTEENTH AMENDMENT RIGHT

Opon the State court rendering summary judgment in favor of Kendall, Hightower exercised his option of appealing to the Georgia Court of Appeals. In the Court of Appeals decision the court stated that the "issue of Defamation was new" and had not been raised by Hightower and that only the issue of Kendall making false claims to the Georgia Department of Labor was raised. The court added that statements made to the Georgia Department of Labor are priviledged and cannot be used for libel claim.

In rendering its decision the Georgia Court of Appeals appears to have knowingly omitted the Defamation issue in order to pass on rendering

REASONS FOR GRANTING WRIT

a decision in favor of Hightower. The Georgia Court of Appeals was able to determine that the malicous act of making false statement to the Georgia Department of Labor was raised, which was associated and raised in conjunction with the issue of Defamation, but not the issue of Defamation. The Georgia Court of Appeals appears to elect to rule on one issue and pass on the other. This decision is actually a regurgitation of Kendalls frivolous defense in this matter.

The Georgia Court of Appeals refusal to acknowledge that the issue of Defamation was raised denied Hightowers Fourteenth Amendment right to due process under the law as well as equal protection under the law.

REASONS FOR GRANTING WRIT

(C)

THE GEORGIA COURTS OMITTED IN ORDER TO PASS ON THE FACTS BY CALLING CORPORATE MEMOS "WARNING LETTERS".

The Georgia Court of Appeals by its own admission mistook intercorporate memos as warning letters. Article 3 of the courts ruling states that "Hightower appears to claim that he is being libel by warning letters given to him." This means that the court mistook intercorporate memos for warning letters. Therefore, the court overlooked a key material fact in the record.

One of the corporate memos, which is called a warning letter by the Georgia Court of Appeals, was submitted by Kendall and is signed by six employees. This corporate memo states that anyone who is found to be in violation of

Article 3 Ga. App. Appendix (A)

REASONS FOR GRANTING WRIT

the pallet policy will be considered as a "thief and dishonest". Hightower was falsely accused of violating the policy and therefore wrongfully held to be a thief and dishonest before his co-workers. In addition Kendalls evidence shows that a meeting was held with evening shift employees at which they were told that Hightower was fired for theft.

These actions by Kendall constitute publication of libel. By calling corporate memos warning letters Kendall tries to give the impression that it acted discreetly in this matter, thereby avoiding the fact that there was publication of libel. Hightower had cited:

OCGA 51-5-3 A libel is published as soon as it is communicated to any person other than the party libeled.

REASONS FOR GRANTING WRIT

In addition Hightower offered the following:

"Intra corporate communications constitute publication."

Prosser and Keeton on the law of torts 133, 798w 15 5th ed (1984)

Also,

"Bangor Hydro-Electric contends that statements among its own employees cannot be considered a publication to a third party for purposes of defamation action. We disagree. We have held that although a communication to fellow employees may have been protected by a qualified privilege, it was nevertheless a publication of the information."

Staples v. Bangor Hydro-Electric Co. 629 Atlantic Report 2d Series 601 Maine S.Ct. (1993)

REASONS FOR GRANTING WRIT

Moreover, all three of the following juridictions concluded that:

"There is no good reason to protect a corporation as opposed to a partnership or individual enterprize; that damage to one's reputation within the corporate community may be as devastating as that outside."

Luttrell v. United Tel. System, Inc. 9 Kan. App. 2d 620,683 P. 2d 1292 (1984)

Pirre v. Printing Devs.,Inc. 468 F. Supp. 1028 S.D.N.Y. (1979)

Bander v. Metropolitain Life Ins. Co., 313 Mass 337 47 NE 2d 595 (1943)

The American Law Institute states that;

"The communication within the scope of his employment by one agent to another agent of the same prinicipal is a publication."

Restatement (Second) of Torts 577 comment; (1977)

REASONS FOR GRANTING WRIT

Therefore, as a result of the court mistaking corporate memos for warning letters, the court over looked the fact that there was publication of libel by Kendall. The Georgia Court of Appeals action of omitting in order to pass on the facts once again denied Hightowers right to due process under the law.

REASONS FOR GRANTING WRIT

(D)

THE GEORGIA COURT OF APPEALS PERMITTED KENDALLS SUBMISSION OF AN ILLEGAL AFFIDAVIT THEREBY DENYING HIGHTOWERS FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS AND RIGHT TO EQUAL PROTECTION UNDER THE LAW.

In the Georgia Court of Appeals decision the court replaced the material issue of "theft and dishonesty" with the immaterial issue of "pallet policy" in an attempt to foreclose Hightowers libel claim. This is accomplished by allowing Al Joiner to speak for Barry Cronin by affidavit.

If the court will examine (APPENDIX H) which is the Termination Notice given to Hightower and is Kendall's official record for his discharge. The reasons include dishonesty and theft. This is an imputation of a criminal act.

There is no mention of pallets, pallet policy or violation of pallet policy in the termination notice.

REASONS FOR GRANTING WRIT

The Termination Notice is signed by Barry Cronin not Al Joiner. Also, Barry Cronin is named in the original Complaint as the Kendall manager responsible for causing this action. Al Joiner cannot speak by Affidavit for other corporate employees.

"one corporate employee cannot speak by affidavit for another."

Lubbers v. Tharpe & Brooks Inc., 160 Ga. App. 709,288 SE 2d 54 (1981)

Textile Products Inc. v. Fitts Cotton Goods Inc. 124 Ga. App. 421,184 SE 2d 14 (1971)

Therefore, Al Joiners affidavit is invalid in its ablility to give the reason for Hightowers termination from employment.

Moreover, the Georgia court had its reasons for Hightowers termination as given in the Termination Notice signed by Barry Cronin which include theft and dishonesty.

REASONS FOR GRANTING WRIT

Nor, can Al Joiners affidavit be used to foreclose all claims of libel, because the Termination Notice and other corporate memos are separate and apart from his testimony.

Notice, it was Barry Cronin who signed the letter of termination and who malicously submitted false claims of theft and dishonesty to Georgia Department of Labor. It appears that once it was revealed by virtue of this complaint that his actions were criminal and not without penalty OCGA 34-8-256 (B), the effort was made to shift the blame to one of his subordinates (Al Joiner). As a result we have Al Joiners Affidavit. In which, Al

REASONS FOR GRANTING WRIT

Joiner who is also an "at will" employee and is also subject to termination of employment by Barry Cronin appears to have been coerced into taking full responsibility for Barry Cronins gross indiscretion and illegal acts without knowing the liablity of his actions.

Georgia law in its wisdom forbides the practice of allowing one corporate employee from giving testimony by affidavit as to the actions of another. By allowing this illegal practice in order to pass on the issue of Defamation and to foreclose all libel claims Georgia courts once again abridged Hightowers Fourteenth Amendment right to due process as well as equal protection under the law.

Al Joiners Affidavit Appendix (I)

REASONS FOR GRANTING WRIT

II. CASE CITATIONS AND AUTHORITIES IN SUPPORT OF WRIT

The United States Supreme Court should review state court findings:

> "Where a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it; or where a conclusion of law as to a Federal right and a finding of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts."

Fiske v. Kansas, 274 US 380,385-86 (1927)

Creswill v. Knights of Pythias,225 US 246, 261 (1912)

Sterling v. Constantin,287 US 378,398 (1932)

The United States Supreme Court has frequently made independent examination of facts.

REASONS FOR GRANTING WRIT

CASE CITATIONS AND AUTHORITIES IN SUPORT OF WRIT

Especially in cases when there are findings to support elements of malice or falsity in state court libel actions. Examples of such cases are:

New York Times Co. v. Sullivan, 376 US 254 285 (1964)

Beckley News. v. Hanks 389 US 81,83 (1967)

Greenbelt Cooperative Pub. Assn. v. Bresler 398 US 6,11 (1970)

Time, Inc. v. Pape, 401 US 279,284 (1971)

Bose Corp. v. Consumers Union, 466 US 485 499,508-10 (1984)

If the Supreme Court is to meet its constitutional responsibilities, it cannot permit itself to be.

"completely bound by state court determination of any issue essential to decision of

a claim of federal right; else federal law would be frustrated by distorted fact finding."

Stein v. New York, 346 US 156,181 (1953)

Moreover, a state court cannot deprive a litigant of a federal right by omitting to pass upon basic questions of fact.

"In that situation the Supreme Court will examine the record itself to determine what facts reasonably might be and presumably would be found there from by the state court."

Brooklyn Savings Bank v. O`Neil, 324 US 697,703 (1945)

Merchants National Bank v. Richmond, 256 635,638 (1921)

Carlson v. Washington, 234 US 103,105 (1914)

REASONS FOR GRANTING WRIT

CASE CITATIONS AND AUTHORITIES IN SUPPORT OF WRIT

As the state agency responsible for handling employment and labor issues on a daily basis, the Georgia Department of Labor is the foremost authority of the state in general and in particular in this matter as it held a hearing immediately after this incident took place.

In the Termination Notice which is the official document submitted to the Georgia Department of Labor, Kendall gave the following reasons for Hightowers discharge: "inability or unwilling to perform work; neglect of duty; theft and dishonesty". Anyone of these reasons for discharge would have prevented Hightower from receiving benefits. However, after holding the hearing the Georgia Department of Labor decided

"that information fails to show claimant could have prevented the incident which caused the discharge or that he was at fault in the separation. Benefits allowed."

Georgia Dept. of Labor decision Appendix (I)

REASONS FOR GRANTING WRIT

III. NATURE OF CASE IMPORTANCE

This case is important not only for the aforementioned legal reasons. In addition, it is important to every United States citizen that must make their way through life as a wage earner. Unfortunately, it appears that it is no longer enough for corporations to layoff employees in order to cut cost.

Now some misguided corporations engage in the cruel practice of falsely accusing employees of criminal- acts in order to avoid all liability upon termination of employment.

A review of the record will reveal evidence that Hightower was not the only Kendall employee that was to be terminated

REASONS FOR GRANTING WRIT

from employment by using this cruel practice. But rather, several honest, decent, hard working, middle aged Kendall employees with families, were simultaneously being prepared for termination of employment in this exact and same manner. Such a cruel practice surely deserves the attention of this court. Especially, when such actions have not been called into question by state courts.

Finally,

> "The right of a man or woman to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being - a concept at the root of any decent system of ordered liberty."

Rosenblatt v Bear, 383 us 75, 99, 86 S.Ct 669, 683, 15 L.Ed. 2d 597 (1966)

CONCLUSION

Petitioner prays that Certiorai due issue.

Respectfully Submitted,

David T. Hightower Sr.
1665 Westwood Ave. SW
Atlanta, Georgia 30310
(404) 595-1298

Hightower

vs.

Kendall Co.

APPENDIX

A. Decisions of Georgia Courts

B. Original Complant

C. Interrogatories

D. Motion to Compel

E. Motion for Default

F. Motion For Reconsideration to Georgia Court of Appeals

G. Al Joiner's Affidavit

H. Termination Notice

I. Georgia Department of Labor Decision

SUPREME COURT OF GEORGIA

Case No. S97C1082

July 25, 1997

David T. Hightower, Sr.

vs

Kendall Company

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

s/ Sherie M. Welch
Clerk

Georgia Court of Appeals

Case No. A96A2147

Feb. 13
~~March 4~~, 1997

David T. Hightower Sr.,

vs

Kendall Company

Smith, Judge.

Pro se plaintiff David Hightower filed this action for wrongful discharge against his employer, The Kendall Company. He also claimed that Kendall made "mean spirited," false and misleading statements to the Georgia Dept. of Labor in order to deny his unemployment benefits. Summary judgment was granted in Kendalls favor, and Hightower appeals.

Construed in Hightowers favor, evidence was presented that he was employed as a truck loader at Kendalls warehouse for approximately eight years before he was discharged. He did not work pursuant to a contract but was paid hourly wages as an at-will employee. His supervisor, Joiner, testified via affidavit that Hightower was suspended without pay and then fired following an investigation because Hightower loaded pallets onto outgoing trucks contrary to Joiners instruction and established company policy.

1. Hightower raises several arguments as to why his termination was wrongful. These arguments are immaterial. "Employment in Georgia is terminable at will of either party.....so an employee has no entitlement to a certain term of employment unless a contract exist therefor." Golden v. National Service Ind. 210 Ga. App. 53 (435 SE2d 270) (1993). It is undisputed that Hightower did not work pursuant to a contract and that his employment was terminable at will. Consequently, it was Kendalls prerogative to discharge Hightower "without cause and regardless of its motives.....without liability." (Citations and punctuation omitted.) Bendex Corp. v. Flowers, 174 Ga. App. 620 (330 SE2d 769) (1985). See also Johnson v. Hames, 208 Ga. App. 664, 666 (431 SE2d 455) (1993). Hightower therefore has no claim for wrongful termination.

We note Hightowers contention that Joiners Affidavit was "invalid". Disagreement with anothers affidavit testimony does not render that testimony invalid. Additionally, if Hightower wanted to dispute facts,- it was his burden on summary judgment to do so in trial court. See generally Lau's Corp. v. Haskins, 260 Ga.491 (405 SE2d 474) (1991). Hightower also contends the trial court failed to conduct a hearing on the motion for summary judgment. Neither party requested oral argument, however, and the trial court consequently did not err in granting the motion without a hearing. Weir v. McGill, 203 Ga.App. 431,433-434 (4) (417 SE2d 57) (1992).

2. The alleged statements by Kendall to the Georgia Dept. of Labor likewise provide no basis for liability. They were "absolutety priviledged and shall not be made the subject matter or basis for any action for slander or libel in any court of the State of Georgia." OCGA 34-8-122 (a).

3. Hightowers notice of appeal and brief contain new allegations of slander not raised in Hightowers complaint and an extended discussion of the law of libel. He appears to argue that he was libel by warning letters to him, which were attached to Joiners affidavit. He also alleges that Kendall wrongfully told other employees that he was discharged for theft and dishonesty. These claims were not raised below and we will not consider them here. See Long v. Marion, 182 Ga. App. 361, 362 (355 SE2d 711) (1987), aff'd 257 Ga.431 (360 SE2d 255) (1987). Moreover, any argument that the affidavit served as a basis for a libel claim is foreclosed by OCGA 51-5-8, which states, "All charges, allegations, and averments contained in regular pleadings filed in a court of competent jurisdiction, which are pertinent and material to the relief sought, whether legally sufficient to obtain it or not, are privileged. However false and malicious such charges, allegations, and averment may be, they shall not be deemed libelous." As for Hightowers additional claim that a negligence claim remains pending, we note simply that although the complaint does mention negligence, Hightowers claim is for wrongful discharge, which is intentional in nature.

4. Hightower contends the trial courts failure to compel Kendall to answer "pre judgment" interrogatories rendered its grant of summary judgment premature. The only interrogatories appearing in the record are a set of 54 interrogatories, erroneously styled "in FiFa" served by Hightower six weeks after Hightower filed his complaint. Those interrogatories inquired into several aspects of Kendall's business activities, including pallet handling policies, employee turnover rates and the downsiing of Kendalls other plants. Kendall objected to all but one of these interrogatories on the ground that they were "irrelevant and not calculated to lead to discovery of relevant, admissible evidence." Hightower moved to compel answers to the interrogatories, but no order on the motion appears in the record.

The motion did not comply with Uniform Superior Court Rule 6.4 in several respects, including the failure to show that good faith effort was made to resolve discovery disputes prior to filing a motion to compel. Nor did Hightower show how the interrogatories would lead to discovery of relevant evidence. In addition, the interrogatories did not question Hightowers at-will employment status, which was the central issue to be decided. Consequently, the failure of Kendall to answer the interrogatories had no bearing on the trial courts decision. We find no error in the trial courts failure to issue an order compelling Kendall to respond to the interrogatories.

5. On motion by Kendall, the trial court assessed transcript costs of $268.38 and partial attorney fees of $1,000.00 against Hightower. The sanction was based in part on a lengthy letter from Kendalls attorney to Hightower, written before an answer was filed. In the letter, Kendalls attorney explained in detail the reasons the complaint lacked merit, particularly the clear Georgia law concerning at-will employment and advised Hightower that he would face frivolous litigation sanctions if he persisted with the lawsuit. In addition, the lawyer advised Hightower to seek counsel and stated that Kendall would not seek costs if Hightower immediately dismissed the lawsuit. Hightower served 54 immaterial interrogatories about a week later, and further litigation obviously ensued. The trial court assessed costs and attorney fees on the ground that continuation of the action constituted frivolous litigation. Hightower has not appealed this order

Kendall requests that this court also assess a penalty against Hightower. When the law is indisputably clear concerning the issues raised on appeal, frivolous appeal penalties may be imposed. Suchnick v. Southern General Ins. 196 Ga. App. 687,688 (396 SE2d 609) (1990). Upon reviewing the record, including the pleadings, discovery requests, Hightowers depositon and efforts by Kendalls attorney to advise Hightower, and even considering Hightowers pro se status, we agree with the trial court that the complaint lacked merit and that Hightower pursuit of the claim after having

been apprised of the law constitued frivolous litigation. We also agree with Kendall that a frivolous appeal penalty is appropriate. If Kendall's counsels letter to Hightower, which explained the clear Georgia law that his claim was foreclosed by the employment at-will doctrine, did not put him on notice that his claim was frivolous, the trial courts order certainly did. Even after the assessment of costs and a portion of Kendall's attorney fees by the trial court, however, Kendall continued in his effort to raise arguments completely lacking merit. Accordingly, we assess a penalty for frivolous appeal against Hightower in the amount of $500 pursant to Court of Appeals Rule 15 (b). The trial court is directed to enter judgment for a $500 penalty against Hightower and in favor of Kendall upon retutn of the remittitur. See Suchnick, supra Judgment affirmed. Andrews,C.J. Pope,P.J. concor.

State Court of Georgia

Case No. 95VS0104883-H

March 12, 1996

ORDER

Defendant having moved the court for summary judgment in the above-styled case and it appearing to the Court that there is no genuine issue as to any material fact and that Defendant is entitled to judgment as a matter of law, it is therefore ordered that defendants motion is hereby granted.

s/A.L. Thompson
Judge Fulton Co.
State Court

The Complaint

Hightower used a perfectly legal format for raising the issues of Wrongful Discharge, Defamation, Negligence and Malice. The Court appears to object to Hightower raising issues in the body of the complaint. The Court may have an argument as to better practice but certainly not that the issues were not raised. In fact the Court offered a response for the issue of Malice but elected to pass on the issues of Defamation and Negligence for which Kendall had no defense. After omitting in order to pass the court then penalized Hightower for frivolous appeal.

State Court of Georgia
Fulton County
September 30,1995
Case No. 95VS0104883

David T. Hightower Sr. vs. Kendall Company

Complaint for Wrongful Discharge
(Defamation,Negligence,Malice)

Now comes David T. Hightower Sr., plaintiff in the above-captioned action, and for his complaint against Kendall Company as defendant respectfully shows the court as follows:

(1)

Defendant is a business corporation organized and existing under the laws of the State of Georgia, with an office and principal place of business located in Fulton County, Georgia and said defendant is subject to the jurisdiction of this court.

(2)

Proir to the day of August 22, 1995, plaintiff was employed in good standing by defendant for eight years at a salary of $33,250 per year.

(3)

Upon reporting for work the following day, the plaintiff was advised by his supervisor Barry Cronin, an agent of the defendant, that his job had been terminated because of theft of company property, specifically six wooden pallets.(Defamation)

(4)

The plaintiff explained to his supervisor, who had only been employed 6 weeks at the Atlanta Distribution Center, that the pallets in question, six wooden pallets costing seven dollars each, were not stolen but used to protect a $400,000.00 shipment of sterile hospital sup-

plies from water damage and other substances on the trailer floor. The plaintiff explained that the protection of freight shipment was part of his job and that it was unlawful to knowingly subject sterile hospital supplies to substances that could cause contamination.

(5)

The plaintiff was not believed and his job was terminated.

(6)

The shipment was sent to another company owned distribution center in San Jose, California. Photos of the pallets in question were sent to the plaintiffs supervisor proving that the plaintiff, Hightower, had told the truth.

(7)

As a direct and proximate result of the defendants negligence in terminating plaintiff's employment as described herein the plaintiff has sufferred embarrasment and loss of income. OCOG 34-7-20 and OCOG 23-1-17 (Defamation and Negligence)

(8)

The defendants mean spirited action and malicious conduct was demonstrated by making false and misleading statements to the Georgia Department of Labor in order to deny plaintiff unemployment benefits. OCOG 34-2-13 (Malice) The plaintiff was not given severance pay which was given to other employees in simular job positions.

Wherefore, plaintiff prays judgment against the defendant for $22,150.00 together with interest, cost of this action, legal fees and $5,000.00 in punitive damages.

s/David T. Hightower

In the State Court of Fulton Co.
State of Georgia
November 16, 1995
Case No. 95VS0104883H

Interrogatories Propounded to the Defendant

Pursuant to Section 81A-133 and 81A-169 Georgia Code Annotated, as amended, the Plaintiff submits the following Interogatories to the Defendant, The Kendall Company, to answer these Interrogatories under oath within thirty days after service of same.

1. Give a complete copy of the employee file for Plaintiff, David Hightower.

2. Give financial reports for The Kendall Co. and TYCO Labs(parent company)

3. State whether the company is in the process downsizing.

4. Give the name and address of every plant or location closed within the last three years.

5. Give the total number of employees that lost jobs as a result of a location closing.

6. Give the general compensation and/or severance package offered to employees.

7. Give the name of each location closed that was a distribution center.

8. Give the name and location of the last distribution center closed and when it was closed.

9. State how the amount of severance and/or compensation paid to each employee was determined.

10. Give the total number of employees at the Atlanta distribution center by job classification.

11. Give annual employee turnover rate. (3 yrs)

12. Give the types of products distributed by the Atlanta distribution center; both general and specific.(i.e. sterile, non-sterile, etc.)

13. Give a complete list of "house rules and regulations" for Atlanta distribution center.

14. State the policy as related to the shipment of pallets.

15. State whether permission can be given by a shift supervisor or leadman to modify the policy as related to the shipment of pallets.

16. State under what circumstances can the policy as related to the shipment of pallets can be modify by supervisor or leadman.

17. How often is the policy modified by leadmen or supervisors at the Atlanta center.

18. What is the Atlanta centers policy on preventing the damage to hospital supplies

19. State what precautions if any are taken to protect hospital supplies during shipment.

20. State whether the precautions used to protect hospital supplies from damage during shipment include the use of pallets.

21. State what kind of damage to hospital supplies normally occur during shipment.

22. State whether at any time in the past did the Kendall Company maintain its own fleet of trailers dedicated to the shipment of its products.

23. State when the Kendall Company stopped using its own fleet of trailers to transport its products.

24. State what methods were used to replace the dedicated fleet of trailers to transport hospital supplies.

25. If common carriers where used, did they transport other products in addition to hospital supplies.

26. State what other types of products are carried by common carriers in addition to Kendall hospital supplies.

27. State whether the Atlanta distribution center has ever refused to ship its products on a common carrier trailer because of the condition of the trailer.

28. State what kinds of trialer conditions resulted in the refusal of use by the Atlanta center.

29. State whether the condition of common carrier trailers used to transport hospital supplies led to the use of more pallets in order to protect those supplies from damage.

30. Give the total number of damaged cases which were repacked, thrown away or seviced by the Atlanta center.

31. Give the total number of damaged cases which were damaged in transit each year.

32. State what kind of damage occur to hospital supplies while in transit.

37. State what constitute a "throw away" pallet.

39. State how "throw away" pallets are used.

41. How long has the Atlanta center been in operation.

42. Prior to plaintiff, state how many employees lost their job for putting pallets on trailers.

43. State the company job termination policy.

44. State whether the company policy was followed in plaintiffs discharge.

45. State why the termination policy was not followed.

46. State the number of employees assigned to work the Atlanta centers evening shift.

47. In the past five years prior to August 15, 1995, how many employees received suspensions for putting pallets on trailers.

48. During the one week period from August 15, 1995 to August 22, 1995, how many evening shift employees received suspensions for putting pallets on trailers.

49. State company policy regarding employees displaced as a result of downsizing.

50. Give a copy of all letters, memos and/or written correspondence which explans or appertains to the policy.

51. State what company personnel are responsible for implementing the companies downsizing policy.

State Court of Fulton Co.
State of Georgia
December 21, 1995
Case No. 95VS0104883H

David T. Hightower v. Kendall Company

Motion to Compel

Now comes the Plaintiff in the above styled matter and brings this motion as follows:

That the Plaintiff filed Interrogatories on Defendant for Discovery, same as being filed on November 16, 1995 and the Defendant was served by certified mail.

That said Interrogatories have not been answered.

More than 30 days have elapsed from the time that said Interrogatories were served on the defendant, and Defendant has failed and refused, to answer said Interrogatories.

Wherefore, Plaintiff moves that an Order Compel ling that Defendant answer the Interrogatories hereto served on him, and that Defendant be required to pay reasonable expenses incurred in obtaining this Order.

s/David T. Hightower

State Court of Georgia
Fulton County
February 20, 1995
Case No 95VS0104883H

Motion for Default Judgment

This action having become in default on January 21, 1996 by failure of defendant to file answers to Interrogatories and (15) fifteen days having elapsed from the date of default and the default not having been opened as a matter of right or by order of the court, Plaintiff request to recover the sum $27,150, and cost of this action.

s/David T. Hightower

Georgia Court of Appeals

David T. Hightower vs Kendall Co.
Case No 95VS0104883H
A96A2147

Motion for Reconsideration
March 5, 1997

Table of Contents

1. Citations F2

2. Summary F4

3. Enumeration of Errors F8

4. Brief F15

5. Conclusion F19

TABLE OF CITATIONS

Bander v. Metropolitian Life, 313 Mass. 337, 47 NE 2d 595 (1943)

Caswell v. Porter 51 Ga. App. 513, 180 SE 860 (1935)

Dickey v. Brannon 118 Ga. App. 33,162 SE 2d 827 (1968)

Franklin v. Evans, 55 Ga. App. 177,189 SE 722 (1937)

Grayson v. Savannah News 110 Ga. App. 561,139 (1967)

Garren v. Southland Corp., 235 Ga. 784,221 SE 2d 571 (1976)

Ingram v. Kendrick, 48 Ga. App. 278,172 SE 815 (1934)

Jordan v. Hancock, 91 Ga. App. 467, 86 SE 2d 11 (1955)

Lubbers v. Tharpe & Brooks Inc. 160 Ga. App. 709,288 SE 2d 54 (1981)

Luttrell v. United Tel. Systems Inc. 9 Kan. App. 2d 620,683 P.2d 1292 (1984)

Montgomery v. Pacific & South Co. 131 Ga. App. 712,206 SE 2d 631 (1972)

TABLE OF CITATIONS

Morton v. Gardner, 155 Ga. App. 600,271 SE 2d 733 (1980)

Piedmont Cotton Mills v. James 59 Ga. App. 239,200 SE 457 (1938)

Pirre v. Printing Devs. Inc. 468 F. Supp. 1028 S.D.N.Y. (1979)

Ray v. Henco Elecs. Inc. 156 Ga. App. 394, 274 SE 2d 602 (1980)

Southland Publs. v. Sewell, 111 Ga. App. 803,143 SE 2d 428 (1965)

Staples v. Bangor Hydro-Electric Co. 629 Atlantic Rep. 2d S. 601 Maine (1993)

Textile Products Inc. v. Fitts Cotton Inc. 124 Ga. App. 421,184 SE 2d 14 (1971)

Walker v. Sheehan, 80 Ga. App. 606,56 SE 2d 628 (1949)

Veazy v. Blair, 86 Ga. App. 721,72 SE 2d 481 (1952)

OCGA 34-8-256 (B) Ga. Dept. of Labor

OCGA 51-5-3 Libel and Slander

Other Authorities

The American Law Institute

Georgia Department of Labor

SUMMARY

David T. Hightower Sr., filed a Complaint for Wrongful Discharge, Defamation, Negligence and Malice against Kendall Healthcare Products.

Prior to August 22, 1995 Hightower was employed in good standing by Kendall for eight years. Upon reporting for work the following day, Hightower was advised by his supervisor Barry Cronin, an agent of Kendall, that his job had been terminated because of Hightowers theft of company property specifically six wooden pallets.

Hightower explained to Barry Cronin, who had only been employed six weeks at the Atlanta distribution center for Kendall, that the

SUMMARY

pallets in question were not stolen but were used to protect a $400,000.00 shipment of sterile hospital supplies from water damage and other substances on the floor of the trailer in which the supplies were shipped.

Hightower carefully explained that the protection of freight during shipment was part of his job and that it was unlawful to knowingly subject sterile hospital supplies to substances that could cause contamination. Hightower was not believed and his was employment was terminated.

The freight shipment had been sent to another Kendall distribution center in San Jose, California. Photos of the pallets in question

SUMMARY

were sent to Hightower's supervisor proving that the pallets had been used as Hightower had stated.

The use of wooden pallets, cardboard, plastic and other dunnage for the protection of frieght shipments was a common every day occurence at the Kendall distribution center. In as much as the same trailers that carried Kendall Heathcare products also carried a wide range of other products including hazardous waste, acids, fertilizer and like products.

Therefore, the only protection that Kendall products have from contamination is the care and good judgment exercised by its loaders.

SUMMARY

Kendall spends millions of dollars each year employing a variety of steriliation processes, in as much as many of its products are used for invasive hospital procedures (catheters, breathing tubes, etc.). Therefore it is ridiculous for certain Kendall managers to assert that Hightower was stealing pallets as a result of doing his job.

In actuality the allegation that Hightower stole pallets is offerred by Kendall as a cloak for a malicous act.

Even worse, Kendall submitted this false claim of theft to Georgia Department of Labor in an attemp to prevent Hightower from receiving unemployment benefits. After holding a hearing on this matter the Georgia Deparment of Labor held in favor of Hightower.

Enumeration of Errors (1)

The Georgia Court of Appeals by its own admission mistook intercorporate memos as warning letters. Article 3 of the courts ruling states "Hightower appears to claim he is being libel by warning letters given to him." This means that the court mistook intercorporate memos for warning letters and the court overlooked a key material fact in the record. One of the memos submittted by Kendall and is signed by evening shift employees states that anyone who violates the pallet policy will be considered as a "thief and dishonest". Hightower was falsely accused of violating the policy and therefore wrongfully held to be a thief and dishonest before his co-workers.

In addition Kendall's evidence shows that a meeting was held with evening shift employees at which they were told that Hightower was fired for theft.

These actions by Kendall constitute publication of libel.

OCGA 51-5-3 A libel is published as soon as it is communicated to any person other than the party libeled.

Enumeration of Errors (1)

"Intra corporate communications constitute publication."

Prosser and Keeton on the law of torts 133, 798w 15 5th ed (1984)

Also,

"Bangor Hydro-Electric contends that statements among its own employees cannot be considered a publication to a third party for purposes of defamation action. We disagree. We have held that although a communication to fellow employees may have been protected by a qualified privilege, it was nevertheless a publication of the information."

Staples v. Bangor Hydro-Electric Co. 629 Atlantic Report 2d Series 601 Maine (1993)

Moreover, all three juridictions concluded that,

"There is no good reason to protect a corporation as opposed to a partnership or individual enterprize; that damage to one's reputation within the corporate community may be as devastating as that outside."

Luttrell v. United Tel. System, Inc. 9 Kan. App. 2d 620,683 P. 2d 1292 (1984)

Pirre v. Printing Devs.,Inc. 468 F. Supp. 1028 S.D.N.Y. (1979)

Bander v. Metropolitain Life Ins. Co., 313 Mass 337 47 NE 2d 595 (1943)

Enumeration of Errors (1)

The American Law Institute states that;

"The communication within the scope of his employment by one agent to another agent of the same prinicipal is a publication."

Restatement (Second) of Torts 577 comment; (1977)

Therefore, as a result of the court mistaking corporate memos for warning letters, the court over looked the fact that there was publication of libel by Kendall.

Enumeration of Errors (2)

The court replaced the material issue of theft and dishonesty with the immaterial issue of pallet policy by allowing Al Joiner to speak for Barry Cronin via affidavit.

If the court will examine (Exhibit 1) which is the Termination Notice given to Hightower and is Kendall's official record for his discharge. The reasons include dishonesty and theft. This is an imputation of a criminal act.

There is no mention of pallets, pallet policy or violation of pallet policy in the termination notice.

The termination notice is signed by Barry Cronin not Al Joiner. Al Joiner cannot speak by Affidavit for other corporate employees.

Lubbers v. Tharpe & Brooks Inc., 160 Ga. App. 709,288 SE 2d 54 (1981)

Textile Products Inc. v. Fitts Cotton Goods Inc. 124 Ga. App. 421,184 SE 2d 14 (1971)

Therefore, Al Joiner's affidavit is invalid in its ablility to give the reason for Hightowers termination from employment.

Moreover, Al Joiner cannot speak for Barry Cronin. The court has its reasons for Hightower's termination as given in the termination notice signed by Barry Cronin which include theft and dishonesty. The court cannot substitute pallet policy in its place.

Enumeration of Errors (2)

Nor, can Al Joiner's affidavit be used to foreclose all claims of libel, because the termination notice and other cooperate memos are separate and apart from his testimony.

Notice, it was Barry Cronin who signed the letter of termination and who malicously submitted false claims of theft and dishonesty to Georgia Department of Labor. It appears that once it was revealed by virtue of this complaint that his actions were criminal and not without penalty OCGA 34-8-256 (B), the effort was made to shift the blame to one of his subordinates (Al Joiner). As a result we have Al Joiner's affidavit. By "changing horses in the middle of a stream" it renders Al Joiner's affidavit incapable of giving reasons for discharge or as a means of foreclosing all libel claims against Kendall.

Enumeration of Errors (3)

The Court found Hightower's lawsuit to be frivolous. This is not only an error but a peculiar finding at best. In as much as the court has historically held that;

"To charge one with stealing is libel per se"

Ingram V. Kendrick 48 Ga. App. 278,172 SE 815 (1934)

"To charge falsely that one has acted deceitfully in conducting his business affairs is Actionable."

Dickey v. Brannon 118 Ga. App. 33,162 SE 2d 827 (1968)

"To make the charge that another is a thief is actionable."

Franklin v. Evans, 55 Ga. App. 177,189 SE 722 (1937)

The imputation of a crime is not a frivilous matter. In as much as it can destroy one's character for life. It is suprizing that the court takes such a matter so lightly.

Enumeration of Errors (4)

Kendall opened the door to inquires into several aspects of it's business when the claim was made that Hightower was terminated from employment in accordance with it's pallet policy. Upon receiving the Interrogatories which focused primarily on the pallet policy, Kendall knew their answers would show that the policy was misapplied in this matter and declined to respond.

Also, it must be noted that by refusing to respond to Interrogatories Kendall has offered no defense from liability for Defamation.

Brief

Liablility exist under the law of defamation, as Hightower has shown that the allegation by Kendall accusing Hightower of being a thief and dishonest is actionable,

"Words claiming that a person actually committed a crime and where the charge is made in writing and is exhibited to a third person and is false, constitutes libel which is actionable without proof of special damages."

Caswell v. Porter, 51 Ga. App. 513,180 SE 860 (1935)

"Statements which tend to injure one in his trade, occupation or business are libelous and no allegation of special damages need be made to support an action for libel base on such statements."

Walker v. Sheehan, 80 Ga. App. 606, 56 SE 2d. 628 (1949)

Moreover,

"Libel consists of a charge that one is guilty of a crime, dishonesty or immorality."

Grayson v. Savannah News-Press Inc. 110 Ga. App. 561,139 (1947)

"To make the charge that another is a thief and is dishonest is actionable."

Franklin v. Evans, 55 Ga. App. 177,189 SE 722 (1937)

Brief

Legal malice is inferred once Hightower established that the defamatory words were published by Kendall and concerned Hightower. In this case libelous statements were made without sufficent cause or excuse. Kendall has shown that Hightower was an "at will" employee and could have been dismissed from his job at any time without any reason.

However, Kendall chose to malicously defame Hightower by accusing him of stealing from the company.

Ill will was demonstrated because Kendall knew that by accusing Hightower of stealing from the company, Hightower would:

1. lose his income as a result of termination.

2. would not be given severance pay in accordance with the companies down-sizing policy.

3. would not be eligible for unemployment benefits.

4. would have a difficult time finding gainful employment in as much as almost all job application asks if the applicant was ever terminated from a job for theft or dishonesty.

In as much as Hightower made his living as a wage earner, Kendall's actions caused economic ruin.

Brief

The condition of privilege was lost as a result of Kendall making statements about Hightower which were known to be false or recklessly disregarded the truth. What is Kendall accusing Hightower of stealing?

Kendall entered into evidence a photograph showing "throw away pallets" being used in accordance with company policy for the protection of freight shipments. Therefore, Kendall knew there was no theft but accuse Hightower of stealing anyway. Even worse, Kendall fired Hightower for stealing and made him appear as a thief before his co-workers.

"Conscious knowlege of falsehood amounts to abuse of privilege."

Jordan v. Hancock, 91 Ga.App. 467,86 SE 2d 11 (1955)

Therefore, Kendall must be denied protection from liability.

Brief

The question in this case should not be whether Kendalls statements were malicous, but how could they be worse. It is quite clear that Kendall sought to injure Hightower by the attempt to prevent him from receiving unemployment benefits when Kendall knew that its statements about Hightower were false.

Out of thousands of Kendall employees no one other than Hightower has been terminated and held to be a thief as a result of violating pallet policy. This policy must be consider as a cloak for Kendall's malicous act. However,

"a cloak will not suffice, the party defamed has a right to action."

Veazy v. Blair, 86 Ga.App.721,72 SE 2d 481 (1952)
Morton v. Gardner, 155 Ga.App. 600,271 SE 2d 733 (1980)

Conclusion

Prospective employers will not ask Hightower questions in regards to pallet policy. They will ask; "Have you ever been terminated from a job for theft or dishonesty?" The answer for Hightower must be yes. It must be yes because the Court so far has refused to acknowledge that the accusation of theft and dishonesty by Kendall is an imputation of a crime upon Hightowers character.

Kendall has offered in defense of its actions that the false statements submitted to the Georgia Department of Labor were privileged, which is correct. However, the submission of those false statements show malicous intent and is a criminal act. OCGA 34-8-256 (B)

Kendall has offered that the false statements to the Georgia Department of Labor was the only claim of Defamation by Hightower and all other claims are new. This amounts to wishful thinking on the part of Kendall in as much as the very first document submitted in State Court clearly raises the issue of Defamation and the malicous act of submitting false claims to the Georgia Department of Labor separate and apart.

"Upon the integrity wisdom and independence of the judiciary depend the sacred rights of free men and women"

It is the judicary and not warehouse managers

Conclusion

of the Kendall Corporation that has the responsibility of determining whether the citizens of Georgia must go through life considered as "thiefs and being dishonesty." And even, the Court must do so only after careful deliberation. Kendall had the right under the "at will laws" of Georgia to tell Hightower you are fired. Kendall did not have the right to say you are a thief, unless it was true. It is not true. Kendall must therefore be held liable for its defamatory remarks and malicous actions.

In as much as Hightower has shown the court that all criteria for the relief sought against Kendall for Defamation have been satisfied. In addition, Hightower has provided the Court with ample precedence and/or rule of law for each criterion. Hightower asks the Court to award three hundred and fifty thousand dollars in compensatory damages. Also as a result of the ill will, malice and outrageous conduct shown by Kendall, Hightower asks the court to award punitive damages of three hundred and fifty thousands dollars.

Hightower respectfully makes these requests.

s/David T. Hightower Sr.

David T. Hightower Sr.
1665 Westwood Ave. SW
Atlanta, Ga. 30310
(404) 595-1248

(Al Joiner who is an "at will" employee subject to termination by Barry Cronin provided the following Affidavit contrary to Georgia law.)

State Court of Georgia
Hightower vs Kendall Co. Case No.95VS0104883H
Affidavit of A.W. Joiner Dec. 12, 1995

Personally appeared defore me, A.W. Joiner who, being sworn, states:

My name is A.W. Joiner, and I am Warehouse Manager for The Kendall Company 6070 Fulton Ind. Blvd. Atlanta, Georgia. In that capacity I was the supervisor of truck loader, David Hightower, Plaintiff in this case.

Mr. Hightower was employed by Kendall on an at-will basis. He is paid by the hour and has never had any contract of employment.

Mr. Hightower was fired on my recommendation for loading pallets onto outgoing trucks contrary to my instructions and established company policy. Because he left the pallets on the trailer the company was able to load less frieght on the trailer, and the freight on the trailer was damaged.

Note:The receiving location was another Kendall Distribution Center in San Jose,California. There were no damages or shortages reported. In fact the receiving location manager sent photos showing that the pallets were properly used as Hightower had stated. This photo is in evidence for this case.

s/A.W. Joiner

s/Betty Dubois, Notary

The termination notice is the official record of reasons of discharge and is what must be submitted to the Georgia Department of Labor in defense of denial of employee's claims.

Termination Notice
August 28,1995

Mr. David T. Hightower
1665 Westwood Ave.,SW
Atlanta, Georgia 30310

This is to confirm that your employment with Kendall has been terminated for the violation of the following house rules:

#14 Inability or unwillingness to perform work as required or directed.

#15 Neglect of duty, including neglect, misuse and wastage or willful damage to, or failure to properly safeguard and protect company property.

#19 Dishonesty or theft, including removal of company or other employees property.

s/Barry Cronin

GEORGIA DEPARTMENT OF LABOR

September 19, 1995

David T. Hightower v. The Kendall Company
Claimant Employer

SECTION I - CLAIM DETERMINATION
Benefits are allowed as of 08/27/95

SECTION II - LEGAL BASIS FOR DETERMINATION
The Employment Security Law at OCGA Section 34-8-194 paragraph (2) (A) requires disqualification if the individual has been discharged or suspended from work with the most recent employer for failure to obey orders, rules, or instructions or for failure to discharge the duties for which the individual was employed.

SECTION III - REASONING
Claimant was discharged and accused of being negligent in performing his duties. Claimant insists that due precaution was taken and he performed the job with the same care as always. Information fails to show Claimant could have prevented the incident which caused the discharge or that he was at fault in the separation. Benefits are allowed.

SECTION IV - APPEAL RIGHTS
15 days

s/R. Paden

Note: Kendall's claim of "theft and dishonesty" brought forth by Barry Cronin at this hearing was found to be so outrageous that it was not considered.